

1/3/2020

JULIA C. DUDLEY, CLERK

BY: s/ A. Little  
DEPUTY CLERK

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
LYNCHBURG DIVISION**

LIBERTY UNIVERSITY, INC. )

Plaintiff, )

v. )

MEDIA PARTNERS, INC. )

a North Carolina Corporation )

8000 Llewellyn Ct. )

Raleigh, North Carolina 27613-8823 )

Defendant. )

Case No. 6 : 20CV00002

**COMPLAINT**

Plaintiff Liberty University, Inc. ("Liberty"), by counsel, files this Complaint against Defendant Media Partners, Inc. ("MPI"). In support of its Complaint, Liberty states as follows:

**NATURE OF THE ACTION**

1. Liberty seeks damages from MPI as a result of MPI's breaches of a Master Purchasing Agreement ("Agreement") arising out of MPI's failure to afford Liberty a reduced media commission after Liberty spent in excess of \$1,000,000 in gross media spending.

2. MPI describes itself as a full service marketing, branding, interactive, and media advertising agency.

3. In March, 2015, Liberty contracted with MPI to provide media advertising and promotional support and services.

4. As part of their Agreement, Liberty agreed to pay MPI a commission of 15% on gross media spending up to and including \$1,000,000 for all departments within the University.

Liberty also agreed to pay a monthly retainer of \$1,000.00 to cover meetings and account service for individual departments within the university that had annual budgets of \$300,000.00.

5. As further part of the Agreement, MPI agreed that it would charge Liberty a reduced media commission of 3.5% applied to all gross media spending in excess of \$1,000,000.00 in annual university spending.

6. MPI failed to apply the commission discount to all of Liberty's gross media spending in excess of \$1,000,000.00 for the agreed-upon period of September 1, 2016 through December 31, 2017.

7. As a result of MPI's breach of the Agreement with Liberty, Liberty has incurred damages totaling at least \$137,878.23.

### **PARTIES**

8. Liberty is a corporation organized and operating under the laws of the Commonwealth of Virginia. Liberty's principal place of business is located at 1971 University Boulevard, Lynchburg, Virginia 24502.

9. MPI is a corporation organized and operating under the laws of the State of North Carolina. MPI's principal place of business is located at 8000 Llewellyn Ct., Raleigh, North Carolina, 27613-8823.

### **JURISDICTION AND VENUE**

10. This Court has diversity subject matter jurisdiction over this matter because Liberty and MPI are corporations that are incorporated and maintain principal places of business in different states, and Liberty seeks damages that exceed \$75,000.00, exclusive of interest and costs. *See* 28 U.S.C. § 1332.

11. This Court has personal jurisdiction over MPI because MPI entered into a Master Purchasing Agreement ("Agreement") with Liberty. In the Agreement, MPI consented to

jurisdiction in this Court for resolution of any disputes arising under the Agreement. Section 10.17 of the Agreement specifies “[a]ny controversy, dispute or claim arising out of or relating to this Agreement, including any Statement of Work or Purchase Orders, must be brought in a court located in Lynchburg, Virginia.” Further, MPI entered into the Agreement and related Statements of Work, Purchase Orders, and incorporated agreements with Liberty in Virginia. A copy of the Agreement is incorporated by reference and is attached as **Exhibit 1**.

12. Venue is also proper in this judicial district and in this division under section 10.17 of the Agreement, which provides that “[a]ny controversy, dispute or claim arising out of or relating to this Agreement, including any Statement of Work or Purchase Orders, must be brought in a court located in Lynchburg, Virginia.”

### **FACTS**

#### **The Master Purchasing Agreement**

13. On March 19, 2015 Liberty and MPI entered into the Agreement. Nancy Bono, Partner, signed the Agreement on behalf of MPI. Jamie Hill, then-Director of Procurement, signed the Agreement on behalf of Liberty.

14. Pursuant to the Agreement, MPI was to perform services for Liberty in the form of, among other things, advertising, promotional, and other media-related services.

15. The term of the Agreement commenced on March 20, 2015 and expired thirty-six (36) months thereafter. **Exhibit 1**, § 3.1. The Agreement remained in full force at all times relevant to the claims at issue in this Complaint.

16. Pursuant to the Agreement, MPI was to perform work on individual projects for Liberty as requested and/or outlined in subsequent Statements of Work, Purchase Orders, Proposals, or similar documents. *Id.* at § 2.1. Each Statement of Work or similar document was subject to the

terms of the Agreement and, upon execution by Liberty and MPI, became a part of the Agreement.  
*Id.*

17. Pursuant to the Agreement, each Statement of Work was to “include, at a minimum, a description of the Services or Products to be provided to Liberty and the charges or rate for those Services or Products.” *Id.* Statements of Work could set forth “additional terms and conditions agreed upon by the parties such as (a) completion schedules; (b) specifications; (c) acceptance criteria; (d) service levels; and (e) estimated charges.” *Id.*

18. The Agreement also references an “Exhibit A,” attached to the Agreement, to provide an example of a Statement of Work. That “Exhibit A” is attached to the Agreement within **Exhibit 1**. Pursuant to the Agreement, a “‘Statement of Work’ is a document substantially in the form attached as Exhibit A that outlines the obligations of the parties with respect to particular Services, Products, and/or Deliverables.” *Id.*

19. Exhibit A to the Agreement is an agreement between Liberty and MPI specifically relating to the Liberty Flames Sports Network (“LFSN”). *Id.* at Exhibit A. Exhibit A describes the scope of work, projects, and pricing for MPI’s work with LFSN. *Id.*

20. Specific terms regarding pricing and commission payments are not contained in the Agreement. However, Exhibit A to the Agreement sets forth specific pricing for MPI’s work with LFSN. *See* Exhibit A to **Exhibit 1**.

21. Pricing and commission payments for the LFSN agreement are as follows:

Payment for services will be in the form of a 15% agency commission on the total to be paid by Liberty University, Inc. for LFSN media placed by MPI with a guaranteed minimum of \$260,000 media placement. In the event media placement under this agreement reaches a cumulative total of \$550,000, prior to any additional services being rendered by MPI or costs incurred by Client, both parties must mutual agree in writing to extend the services stipulated within this agreement. Client will pay Agency an advance of \$39,000.00 for commissions on the guaranteed minimum media placement in six equal monthly payments of \$6,500 each beginning February of 2015 and, to the extent paid, will be shown as a credit on Agency invoices for media placements until the credits for advance payment on the guaranteed minimum

media placement have been exhausted. Any balance remaining for media placements above the guaranteed minimum shall be paid as payment for such media placements becomes due from Client and is invoiced by Agency.

*Id.*

22. Exhibit A to the Agreement was drafted by MPI.

23. Nancy Bono signed Exhibit A to the Agreement on behalf of MPI on February 12, 2015.

24. Don Moon signed Exhibit A to the Agreement on behalf of Liberty on March 19, 2015.

25. Pursuant to the terms of the Agreement, Exhibit A to the Agreement forms a part of the Agreement. *See Exhibit 1*, § 2.1.

26. The Agreement also references an Exhibit B, to provide a sample form of a Purchase Order. *Id.* at § 2.2. Exhibit B to the Agreement, is attached to **Exhibit 1**.

27. Additionally, the Agreement provides that “[t]he rates or prices to be charged by Contractor and paid by Liberty will be as set forth in each separate Statement of Work, Purchase Order, or other written exhibit appended hereto, which exhibit will be governed by this Agreement and incorporated herein.” *See Id.* at § 4.1.

28. “Contractor” in § 4.1 of the Agreement is MPI.

29. Under the Agreement, in the event of a dispute, the prevailing party “will be entitled to recover its reasonable attorneys’ fees and costs actually incurred in enforcing such party’s rights . . . including attorneys’ fees and costs incurred in litigating entitlement to attorneys’ fees and costs, as well as in determining the amount of recoverable attorneys’ fees and costs.” *Id.* at § 10.6.

November 29, 2016 Agreement

30. On November 29, 2016, Liberty and MPI entered into another agreement, which referenced the creative budgets for the Liberty University School of Law. This agreement will be referred to as the “SOL Agreement” and is attached hereto as **Exhibit 2**.

31. Pursuant to the Agreement attached hereto as **Exhibit 1**, the SOL Agreement forms part of the 2015 Agreement.

32. MPI drafted the SOL Agreement.

33. In the SOL Agreement, MPI outlined its expertise and process. *See Exhibit 2, p. 1.*

34. In addition, the SOL Agreement states as follows:

**Pricing Proposal:**

MPI operates with a 15% media commission from the media. A reduced media commission of 3.5% will be applied to all gross media spending in excess of a million dollars in annual University spending.

Following an outline structure for providing marketing services through one central agency, the following pricing schedule has been accepted to support all Liberty University media efforts:

1. Less than \$1,000,000 = 15%
2. Over \$1,000,000 = 3.5%

These percentages apply to all media commissions for the 2016-2017 year beginning September 1, 2016 and continuing through December 2017.

*Id.* at **pg. 2**.

35. The SOL Agreement also provides that MPI will “charge a reasonable monthly retainer for account service that provides for all expected meetings with Vice Presidents for each division, the client requestors, and any LU marketing department personnel necessary for performing the requested marketing services at both Liberty University and MPI standards of excellence. **With this in mind, we have arrived at a set monthly retainer of \$1,000 per month to cover meetings and account service for any individual departments with annual budgets under \$300K.**” *Id.* (emphasis in original).

36. As required by the terms of the Agreement, the SOL Agreement further states “[t]his agreement is subject to and incorporates by reference the provisions of the Master Purchasing Agreement (the ‘Agreement’) dated March 20, 2015.” *Id.* at p. 3 (emphasis in original).

37. Nancy Bono signed the SOL Agreement on behalf of MPI.

38. Liberty’s Assistant Vice President of Procurement and Contract Administration signed the SOL Agreement on November 29, 2016.

39. Upon execution of the SOL Agreement, it was incorporated into the Agreement pursuant to § 2.1 of the Agreement. *See Exhibit 1.*

40. On September 12, 2017, Liberty and MPI executed an Amendment to the November 29, 2016 SOL Agreement. The Amendment is attached hereto as **Exhibit 3.**

41. This Amendment changed the SOL Agreement as follows:

1. On page 2, the monthly retainer of \$1,000 per month to cover meetings and account services shall continue through December 31, 2017.
2. On page 2, the “do not exceed” creative budget number of \$35,716.82 shall be increased by \$30,000.
3. On page 2, the “do not exceed” budget of \$192,885.06 shall be increased by \$122,814.67.

### **Exhibit 3.**

42. There were no other changes or amendments to the SOL Agreement.

43. Nancy Bono signed the Amendment on behalf of MPI on September 8, 2017.

44. Jennifer Rawlings, the Executive Director of Budget and Procurement, signed the Amendment on behalf of Liberty on September 12, 2017.

### Damages to Liberty

45. Nancy Bono, acting on behalf of MPI, acknowledged the contractual terms related to payment of commissions pursuant to the Agreement and SOL Agreement on January 25, 2018.

46. MPI failed to provide the full 11.5% commission discount owed to Liberty after Liberty exceeded \$1,000,000 in gross media spending.

47. This resulted in an overcharge in commissions to Liberty of at least \$137,828.73.

**COUNT I: BREACH OF CONTRACT**

48. Liberty incorporates all preceding paragraphs as if fully set forth herein.

49. Liberty and MPI entered into the Master Purchasing Agreement on March 20, 2015.

50. Thereafter, Liberty and MPI entered into the SOL Agreement on November 29, 2016.

51. The SOL Agreement was incorporated into the Master Purchasing Agreement.

52. Under the SOL Agreement, Liberty was to pay MPI a 15% commission for media buys up to \$1,000,000.

53. After Liberty exceeded the \$1,000,000 threshold in gross media spending, Liberty was to receive a commission discount of 11.5%, such that Liberty would pay MPI a 3.5% commission in lieu of a 15% commission.

54. MPI breached its contract with Liberty by failing to afford Liberty the 11.5% commission discount on all media buys exceeding \$1,000,000.

55. As a direct and proximate result of MPI's breaches of the Agreement and the SOL Agreement, Liberty has been damaged in the amount of at least \$137,828.73. Damages in the form of attorneys' fees and other costs continue to accrue.

**PRAYER FOR RELIEF**

WHEREFORE, Liberty prays for judgment in its favor and an award of at least \$137,828.73 against MPI, plus attorneys' fees and costs as well as such other relief as the Court deems necessary and just.

Plaintiff demands a **trial by jury**.

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LIBERTY UNIVERSITY, INC.

By: /s/ Catherine J. Huff  
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